

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-183672

DATE: July 3, 1975

MATTER OF: American Coin Meter of Colorado, Inc.

DIGEST:

Protester's contention that Army solicitation prohibited full and free competition in that it was not set aside for small business; it did not include option renewal clause; and it contained a restrictive time frame for installation of equipment is not supported where record indicates that administrative determinations with respect to such matters were reasonable.

This decision is in response to the protest by American Coin Meter of Colorado, Inc. (hereinafter referred to as ACM), concerning IFB No. DABT39-75-B-0062, issued by the Department of the Army Procurement Division, Fort Sill, Oklahoma.

The invitation in question was issued on April 10, 1975, and called for bids on a requirements type contract for providing and maintaining commercial washers and dryers at Fort Sill, Oklahoma. The contract period set forth in the invitation is from July 1, 1975 through June 30, 1976, or for 12 months after the date of award, whichever is later. Unlike the contract contemplated by the subject invitation, the current contract for the same work was a total set-aside for small business, and contained an option clause exercisable at the discretion of the Government.

ACM's protest is based on its belief that the format of the present solicitation is not reflective of the best interests of the Government. In support of its protest against issuance of the IFB, ACM alleges that the solicitation is so structured that neither free nor full competition, nor an award most advantageous to the Government will be possible.

ACM's primary contention is that the solicitation restricted full and free competition by small business because it was not set aside for their exclusive participation. The report received from the Department of the Army indicates that the present solicitation was not set aside for small business due to the large dollar investment which would be required by the contractor. An unrestricted solicitation was issued in order to obtain full competition and to

provide the Government with the service at the lowest possible cost. The Small Business Administration Office at Tinker Air Force Base, Oklahoma, concurred in the Army's decision to withdraw the solicitation from set-aside status and permit large businesses to also submit bids. Bids were received from four sources, three of which were small businesses. The low bidder was the incumbent, a large business at this time, at \$140,523.60. The other bids submitted were \$143,317.92, \$151,800.00 and \$165,240.00. The price variance between the low bidder and the second low bidder was less than \$3,000.00, which would seem to indicate that there was effective competition for the procurement. Since the determination not to set aside a procurement is a matter within the ambit of sound administrative discretion, and the circumstances here indicate no abuse thereof, it may not be questioned by our Office. B-174949, July 5, 1972.

ACM's second contention is that the omission of an option renewal clause in the solicitation discriminates against new competitors since costs are recoverable over a 1 year period only, while the incumbent contractor-bidder was able to recover a large portion of his costs during the performance of the current contract over several years. The Army has stated that this action was taken pursuant to a Departmental policy set forth in a memorandum of the Assistant Secretary of Defense dated June 12, 1974, precluding the inclusion of options in procurements during inflationary economic periods when an effective economic price adjustment provision is unavailable. The Army reports that it was felt that no adequate provision was available and the inclusion of the option could potentially expose small businesses to undue risks. Additionally, even where an option provision is included, there is no assurance that the contract will be renewed the following year since the Government may choose not to exercise its option and instead issue a new solicitation. In view of the fact that this is a matter primarily for determination by the procuring activity, there is no basis for our Office to object where such determination appears reasonable. In this connection, we note that none of the small business bidders objected to the lack of such a provision.


Lastly, AMC protests the time frame for the installation of equipment, alleging that "a completion date of 8 weeks from the date of award would be more realistic" than the 7 calendar days provided in the solicitation. However, the Army points out that if the protester were allowed 8 weeks in which to commence his services, the troops who use the washers and dryers would be deprived during that time. Since the incumbent contractor was capable of meeting the time period as specified upon commencement of the original contract,

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and no other bidder has protested the time frame, this Office concludes that the time period specified was a reasonable and proper requirement.

On the basis of the above, it is the opinion of this Office that none of the protester's allegations provides valid grounds for objection to the actions of the procuring agency or justification for cancellation of the solicitation.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States